UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION at AKRON

IN RE FIRSTENERGY SOLUTIONS CORP., ET AL., **Debtors**	**Case No. 18-50757-AMK** **Chapter 11** **Honorable Alan M. Koschik, United States Bankruptcy Judge**
FIRSTENERGY SOLUTIONS CORP., **Plaintiff,** **V.** **BLUESTONE ENERGY SALES CORP.,** **Defendant.**	**Adversary Proceeding 18-5100**

REPLY MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO WITHDRAW THE REFERENCE

Defendant Bluestone Energy Sales Corp. ("Bluestone"), through counsel, and pursuant to 28 U.S.C. § 157(d) and Rule 5011 of the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P."), submits this Reply Memorandum in support of its Motion to Withdraw the Reference of the Adversary Proceeding filed by Plaintiff FirstEnergy Solutions Corp. ("FirstEnergy" or "FES" or "Plaintiff"). In further support of its Motion, Bluestone respectfully states as follows:

INTRODUCTION

FirstEnergy's Objection to Bluestone's Motion to Withdraw the Reference fails to dispute and/or concedes several critical facts and arguments that weigh heavily in favor of withdrawing the reference. For instance, FirstEnergy does not dispute that its breach of contract

claim is non-core, that Bluestone is entitled to a jury trial on that claim, that Bluestone has in fact made a timely jury demand, and that Bluestone has expressly not consented to the Bankruptcy Court entering a final judgment in this matter. These undisputed facts, standing alone, are more than sufficient to demonstrate cause to withdraw the reference.

Yet, instead of challenging these facts or arguing that withdrawing the reference is wrong or improper, FirstEnergy merely claims that it is premature and, perhaps, futile. According to FirstEnergy, Bluestone's request to withdraw the reference is premature because the Bankruptcy Court has not determined whether the matter is core or non-core and because this dispute is not yet ready for trial. FirstEnergy further asserts that withdrawing the reference is futile because FirstEnergy boldly asserts that it is virtually guaranteed to win summary judgment on its turnover claim, thus eliminating any need for trial. These arguments, as should be apparent on their face, are without merit. As explained below, this matter is indisputably non-core; there is cause to withdraw the reference; withdrawing the reference is not premature; and, the relevant factors weigh heavily in favor of withdrawing the reference for the entire Adversary Proceeding.

ARGUMENT

I. CAUSE TO WITHDRAW THE REFERENCE AUTOMATICALLY EXISTS AS A RESULT OF BLUESTONE'S JURY DEMAND.

On May 28, 2019, Bluestone filed its Answer to FirstEnergy's Adversary Complaint, expressly invoking its right to a jury trial and stating that it does not consent to a final determination of this proceeding by the Bankruptcy Court. [See Adversary Complaint and Answer, attached respectively as Exhibits A and B.] In its Opposition to the Motion to Withdraw the Reference ("Response"), FirstEnergy concedes these facts, noting that it "does not dispute Bluestone's demand for a jury trial on [the] Breach of Contract Claim, or the propriety of

conducting such trial in District Court[.]"[1] See Response at p. 8. It is therefore undisputed that Bluestone is entitled to a jury trial on Count II of the Adversary Complaint, that it has timely invoked that right, and that the Bankruptcy Court can neither conduct such a trial nor enter a final judgment on that Count. These facts, alone, are sufficient to grant Bluestone's Motion and withdraw the reference of this Adversary Proceeding.

In Caudill v. Burrows (In re Oasis Corp.), 2008 U.S. Dist. LEXIS 122116 (S.D. Ohio June 18, 2008), the Court explained why a motion to withdraw the reference must be granted when a civil jury trial is properly demanded:

> A bankruptcy judge is not authorized to conduct jury trials absent special designation by the district court under 28 U.S.C. § 157(e) and consent of the parties. The Seventh Amendment provides for the right to a trial by jury: 'In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.' U.S. Const., Amend. VII. The parties do not dispute that Defendants are entitled to a jury trial on the state-law claims set forth in Counts One through Five.
>
> Where the party seeking withdrawal of the reference is entitled to a jury trial under the Seventh Amendment, cause to withdraw the reference automatically exists.
>
> In re Oasis Corp., supra, at *6 – 7 (citing In re Infotopia, Inc., 2007 U.S. Dist. LEXIS 74087, *2 (N.D. Ohio Sept. 26, 2007) (emphasis added)).

Consistent with Oasis Corp., supra, courts have generally held that the properly exercised right to a jury trial, on its own, constitutes sufficient "cause" to withdraw the reference where there is no mutual consent to trial before the bankruptcy court. See Sergent v. McKinstry, 472 B.R. 387, 405 (E.D. Ky. 2012) ("Because the Plaintiff has a jury trial right on all of her causes of

[1] These admissions implicitly and necessarily establish that FirstEnergy's breach of contract claim is in fact non-core. Otherwise, Bluestone would have no right to a jury trial before the District Court. See also See Messinger v. Chubb Grp. Of Ins. Cos., 2007 U.S. Dist. LEXIS 35842, *6 (N.D. Ohio May 16, 2017) (A proceeding "seeking to adjudicate primarily private causes of action[] is distinct from the restructuring of debtor-creditor relations, which forms the heart of the federal bankruptcy court's jurisdiction.") (citation omitted).

action, cause to withdraw the reference 'automatically exists' regardless of the remaining factors.") (citation omitted); Rabin v. Skoda Minotti & Co. (In re InkStop, Inc.), 2012 U.S. Dist. LEXIS 11377, *5 (N.D. Ohio Jan. 31, 2012) ("[P]laintiff's right to a jury trial, jury demand and defendants' refusal to consent to final determination by the Bankruptcy Court demonstrate independent and sufficient 'cause' to withdraw the reference of the adversary proceeding."); In re 131 Liquidating Corp., 222 B.R. 209, 211 (S.D.N.Y. 1998) ("[I]f a case is non-core and jury demand has been filed, the district court may find that the inability of the bankruptcy court to hold the trial itself constitutes cause to withdraw the reference."); Growe v. Bilodard Inc., 325 B.R. 490 (D. Me. 2005) ("[A] valid jury demand can have the effect of mandating withdrawal to the District Court for trial."); LHC, LLC v. Club Sporting Consulting Grp., Inc., 2015 U.S. Dist. LEXIS 89011, *3 (N.D. Ill. July 8, 2015) (finding cause to withdraw reference where defendants in adversary proceeding neither waived right to jury trial nor consented to trial in bankruptcy court); Peachtree Lane Assocs., Ltd. v. Granader, 175 B.R. 232, 235 (N.D. Ill. 1994) ("'[C]ause' to withdraw the reference automatically exists in cases where the party seeking the withdrawal is entitled to a jury trial under the Seventh Amendment.") (quoting In re Americana Expressways, Inc., 161 B.R. 707, 709 (D. Utah 1993)); and In re Hardesty, 190 B.R. 653, 655 (D. Kan. 1995) ("Sufficient cause for withdrawal of the reference exists where the adversary proceeding concerns matters for which there is a right to a jury trial, a timely demand for a jury trial, and no mutual consent to trial before the bankruptcy court.").

The preceding authority demonstrates that withdrawal of the reference is warranted where, as here, (a) a jury trial right attaches to the claim sought to be tried, and (b) the party entitled to the jury trial has asserted that right and has not consented to a final determination by a bankruptcy court. Because Bluestone is entitled to a jury trial on Count II, has timely invoked

that right, and has not consented to a final determination by the Bankruptcy Court, cause to withdraw the reference "automatically exists."

II. CAUSE EXTENDS TO SUPPORT THE WITHDRAWAL OF FIRSTENERGY'S PURPORTED TURNOVER CLAIM AS WELL.

Further, Bluestone's properly exercised jury trial right is grounds for withdrawal not only of the non-core breach of contract claim (Count II), but also of the Plaintiff's "turnover claim" (Count I). District Courts routinely allow withdrawal of the reference even in "core" cases where the applicable factors counsel in favor of withdrawal. See In re Holman, 325 B.R. 569, 572 (E.D. Ky. 2005); see also In re Northwest Airlines, 384 B.R. 51, 59 (S.D.N.Y. 2008) (collecting authority of courts withdrawing the reference in core proceedings). Courts have specifically held that "the need for a jury trial outweighs the determination that the matter is a core proceeding and supports granting a motion to withdraw." Steed v. Knox Forex Grp., LLC (In re Rivas), 2009 U.S. Dist. LEXIS 81546, *8 (E.D. Tenn. Sept. 8, 2009); see also Adelsperger v. 3D Holographics Med. Imaging, Inc., 2019 U.S. Dist. LEXIS 85792, * 10 – 11 (N.D. Ind. May 21, 2019) (granting motion to withdraw both core and non-core matters because "the circumstances of the claims are intertwined, and [] it would be impractical to separate them").

This is particularly true where, as here, the Plaintiff's claims are pleaded in the alternative and based upon exactly the same set of factual allegations and agreements. Count I of FirstEnergy's Adversary Complaint is pleaded as a turnover claim under section 542 of the Bankruptcy Code. Yet, in reality, Count I is nothing more than a garden variety breach of contract claim pleaded in the alternative as a turnover claim. Count I seeks the exact same relief as the breach of contract claim asserted in Count II—recovery of an allegedly fixed amount of damages for Bluestone's purported failure to make a "Final Payment"—and will require consideration of the same evidence and same arguments. Indeed, resolution of Count I will

depend on findings of fact, such as the precise amount of coal sold and/or remaining and the amount of any payment owed, for which Bluestone has requested to be decided by a jury. FirstEnergy's two claims are thus so completely intertwined that it would impractical, if not impossible, to separate them.

Under these circumstances, "cause" plainly exists to withdraw the reference for all proceedings. See In re Sevko, Inc., 143 B.R. 114, 116 (Bankr. N.D. Ill. 1992) (separately pending matters in district and bankruptcy court, based upon the same common operative facts, was cause for withdrawal of reference, citing the need for "reducing duplicative proceedings to a single judicial forum"); In re Enviro Scope, Inc., 57 B.R. 1005, 1007 – 08 (E.D. Pa. 1985) (cause existed for withdrawing even the reference of a "core" proceeding to bankruptcy court where common factual and legal questions existed in proceedings pending before district court).

III. THE REMAINING FACTORS WEIGH IN FAVOR OF WITHDRAWAL.

As noted in Bluestone's original Motion, these factors include promoting judicial economy, uniformity in bankruptcy administration, reducing forum shopping and confusion, conserving debtor and creditor resources, expediting the bankruptcy process, whether a party has requested a jury trial, and whether the proceeding is core or non-core. See In re InkStop, Inc., supra, at *3 (N.D. Ohio Jan. 31, 2012) (citation omitted). Contrary to FirstEnergy's arguments, these factors weigh heavily in favor of withdrawing the reference.

A. Judicial Economy, Conservation Of The Parties' Resources, And Expeditious Case Resolution Are All Served By Withdrawing The Reference.

Generally speaking, in a non-core matter, "judicial economy is better served by withdrawing the reference and allowing a court of general jurisdiction to resolve the [whole] matter." Nukote Int'l, Inc. v. Office Depot, Inc., 2009 U.S. Dist. LEXIS 106702, *17 (M.D. Tenn. Nov. 16, 2009); see also Messinger v. Chubb Grp. Of Ins. Cos., 2007 U.S. Dist. LEXIS

35842, *6 – 7 (N.D. Ohio May 16, 2017) ("The court deciding this adversary proceeding will be faced with issues of contract interpretation, insurance law and federal declaratory judgment standards. While these issues are certainly not outside the scope of what a bankruptcy court can do, they equally are not within the specialized grant of jurisdiction to the bankruptcy court, and that distinction guides this Court to favor withdrawal."). Nonetheless, FirstEnergy contends that judicial economy is furthered by allowing the Bankruptcy Court to preside over this matter until it is "trial-ready," at which time this proceeding could be transferred to this Court for trial (if necessary). The Plaintiff's argument strains credulity.

As noted above, Bluestone is entitled to a jury trial on the breach of contract claim and has not consented to a final determination by the Bankruptcy Court. What this means in practical terms is that no matter what else happens in this case, the Bankruptcy Court can only make a recommendation to the District Court as it relates to Count II. See 28 U.S.C. § 157(c)(1). Then, this Court would be required to conduct a de novo review of the report before it could enter a final judgment, essentially doubling the time and expense required to adjudicate this matter. Having two judges separately review the same arguments and same evidence is not furthering judicial economy—it is undermining it. Indeed, this same problem arises if the reference is only withdrawn as to the breach of contract claim, leaving the turnover claim to be decided by the Bankruptcy Court. Under that scenario, this Court (and the parties) would certainly be faced with duplicative proceedings and unnecessary expenditures of time and money because any judgment entered by the Bankruptcy Court on the turnover claim is subject to an appeal to this Court requiring a de novo review. See 28 U.S.C. § 158(a).

FirstEnergy's repeated claim that it will win on summary judgment is likewise without merit. The Bankruptcy Court cannot enter a final judgment (only a recommendation) as to the

breach of contract claim, and FirstEnergy is, frankly, highly unlikely to win on its purported turnover claim. Section 542(b) provides that "an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee." 11 U.S.C. § 542(b) (emphasis added). However, it is well settled that "where the amount to be turned over is subject to dispute, an action for turnover is improper." VML Co., LLC v. Meguir's Inc. (In re VML Co., LLC), 2017 Bankr. LEXIS 4625, *33 (Bankr. W.D. Tenn. Mar. 10, 2017); see also In re Mobley, supra, at **8 – 9 ("[A]n action brought under § 542 for turnover cannot be used as a method to determine disputed rights of parties to property; rather, turnover is a limited remedy for a trustee to obtain what is acknowledged to be property of the bankruptcy estate.").

Here, FirstEnergy does not seek to "turnover" the remaining (if any) coal in the stockpile—it seeks monetary damages for an undetermined amount of coal. Throughout its Complaint, FirstEnergy describes both the amount of coal and the amount of money allegedly owed in equivocal terms, as "roughly" or "approximately." See Complaint [Doc. 1], at ¶¶ 12, 14.[2] Even in its Opposition to Bluestone's Motion to Dismiss, FirstEnergy again and again describes the tonnage as being "roughly" measured.[3] See Opposition [Doc. 9], n. 3 and p. 4. These facts are confirmed by FirstEnergy's other filings, including its Statement of Financial Affairs and the Schedules to its Petition in May 2018, which lists a "Potential Litigation Claim" against Bluestone but the amount requested and current value of the Debtor's interest are listed as "undetermined." [See Doc. 547, p. 39.] Put simply, FirstEnergy cannot obtain a "turnover" of

[2] Counting the Complaint, FirstEnergy has made demands for payment from Bluestone seeking three (3) separate amounts of money based upon three (3) separate amounts of coal allegedly remaining, thereby establishing that the amount of FirstEnergy's claim is unliquidated and therefore not a proper turnover claim.

[3] Before this Court, however, FirstEnergy has conveniently omitted that language, instead suggesting that the amounts of coal and its purported damages are precise, fixed numbers. See Response at p. 3.

a disputed, unliquidated amount. FirstEnergy's unrestrained optimism about its likelihood of success on its turnover claim should thus be tempered, if not abandoned. Regardless, it fails to provide a basis for denying Bluestone's Motion to Withdraw.

B. In This Case There Are No Legitimate Concerns About Uniformity In Bankruptcy Administration Or Forum Shopping.

Because Count II of the Adversary Complaint is based entirely upon state law, there is no concern here that the Bankruptcy Court should preside so as to protect the uniform administration of bankruptcy law. To the contrary, significant authority holds that District Courts are better suited to preside over such claims. See Messinger, supra, 2007 U.S. Dist. LEXIS 35842, at *6 – 7; see also In re Petition of McMahon, 222 B.R. 205, 208 (S.D.N.Y. 1998) ("[U]niformity in the administration of bankruptcy law will not be affected as the breach of contract claim does not turn on bankruptcy law."). Further, Bluestone has not filed a proof of claim and is not party to the Plaintiff's main bankruptcy case.

Similarly, there is no concern about forum shopping in this case. FirstEnergy does not actually argue, so much as intimate, that Bluestone may be forum shopping. Yet, nothing could be further from the truth. Bluestone merely seeks to enforce its right to a jury trial in the proper forum on the Plaintiff's state-law based claim and for that process to be as efficient and free of redundancies as possible. The breach of contract claim is based upon an agreement and actions that occurred pre-petition, and, but for FirstEnergy's bankruptcy, would have necessarily been brought in a federal district court.

CONCLUSION

Perhaps the court in Emerson v. Trinish, 2014 U.S. Dist. LEXIS 84237, *10 (N.D. Ohio June 20, 2014), put it best. Where, as here, the cause is going to come before the District Court at some point when a party exercises its right to a jury trial and does not consent to bankruptcy

court adjudication, it makes sense just to withdraw the reference and be done with it. "Whether through de novo review of a bankruptcy court summary judgment ruling or by conducting a jury trial, this adversary proceeding will likely require a final decision from the Court in the future. Classification of this claim as a non-core proceeding, [defendant's] jury trial demand, judicial economy, and preserving the parties' resources thus all point in favor of withdrawing the reference and issuing a final decision in this Court." Id.

For the foregoing reasons, Bluestone respectfully requests that the Court withdraw the reference of this Adversary Proceeding from the Bankruptcy Court.

Respectfully submitted

/s/ Richard A. Getty
RICHARD A. GETTY
(Ohio Bar #23245)

THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909
rgetty@gettylawgroup.com

COUNSEL FOR DEFENDANT
BLUESTONE ENERGY SALES CORP.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Reply Memorandum In Support Of Defendant's Motion To Withdraw The Reference was served on this the 24th day of June, 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and applicable Standing Order(s), if any, upon the following:

Marc B. Merklin (0018195)
and
Kate M. Bradley (0074206)

BROUSE MCDOWELL LPA
338 South Main Street, Suite 500
Akron, Ohio 44311-4407
Telephone: (330) 535-5711
Facsimile: (330) 253-8601
mmerklin@brouse.com
kbradley@brouse.com

Ira Dizengoff (admitted *pro hac vice*)
Lisa Beckerman (admitted *pro hac vice*)
Joseph Sorkin (admitted *pro hac vice*)
and
Christopher Gessner (admitted *pro hac vice*)

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
idizengoff@akingump.com
lbeckerman@akingump.com
jsorkin@akingump.com
cgessner@akingump.com

/s/ Richard A. Getty
COUNSEL FOR DEFENDANT

mwepld0738

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re: FIRSTENERGY SOLUTIONS CORP., *et al.*,[1] Debtors,	Chapter 11 Case No. 18-50757 (Jointly Administered) Hon. Judge Alan M. Koschik
FIRSTENERGY SOLUTIONS CORP., Plaintiff, v. BLUESTONE ENERGY SALES CORP. Defendant.	Adversary No.

COMPLAINT

Plaintiff FirstEnergy Solutions Corp. ("FES" or "Plaintiff"), a debtor in the above-captioned chapter 11 case, through its undersigned counsel, hereby files this Complaint for turnover and breach of contract against defendant Bluestone Energy Sales Corp. ("Bluestone" or "Defendant"), and in support thereof alleges as follows:

PARTIES

1. Plaintiff FES is an Ohio corporation with its principal place of business located at 341 White Pond Drive, Akron, Ohio 44320.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; FirstEnergy Generation, LLC ("FG") (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC ("NG") (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company ("FENOC") (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors' address is: 341 White Pond Dr., Akron, OH 44320.

2. On information and belief, Defendant Bluestone is a Virginia corporation with its principal place of business located at 302 S. Jefferson Street, Roanoke, Virginia 24011.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This adversary proceeding is a core proceeding under 28 U.S.C §§ 157(b)(2)(A) and 157(b)(2)(E), and this Court may enter a final order consistent with these statutes and Article III of the United States Constitution.

4. Venue is proper in the Bankruptcy Court for the North District of Ohio pursuant to 28 U.S.C. §§ 1408-09.

BACKGROUND

5. On March 31, 2018, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes and are being jointly administered.

6. The Debtors are presently operating their businesses and managing their property as debtors and debtors in possession pursuant to 1107(a) and 1108 of the Bankruptcy Code.

The Coal Purchase Agreement

7. On October 10, 2016, Bluestone and FES entered into a Coal Purchase Agreement (the "Agreement"), attached hereto as Exhibit A, under which Bluestone and FES agreed that Bluestone would purchase from FES 130,771 tons of coal (the "Purchased Tons") that FirstEnergy Generation LLC ("FG") had previously purchased from Bluestone.

8. The Purchased Tons were located at a stockpile on Bluestone's property, the Bent Mountain Operation located near Meta, Kentucky, held for FG's benefit, pursuant to a prior agreement between Bluestone and FG (as assignee of Monongahela Power Company).

9. Effectively, Bluestone was to buy back the coal it had previously sold to FES, agreeing to pay FES after Bluestone was able to sell the coal to third-party customers. Regardless of whether Bluestone sold all of the Purchased Tons to third parties, it agreed to take ownership of all the Purchased Tons left at the stockpile "in no event later than February 28, 2017." Agreement § 2.

10. If any Purchased Tons remained in the stockpile as of February 28, 2017, Bluestone was obligated to pay FES for the remaining Purchased Tons no later than March 7, 201[7] (the "Final Payment Date").[2]

11. Pursuant to the terms of the Agreement, Bluestone agreed to pay $40 per ton for the Purchased Tons.

Bluestone Breaches the Agreement by Failing to Make the Final Payment

12. As of March 2, 2017, less than a week before the Final Payment Date, roughly 77,095.94 tons of coal of the Purchased Tons remained at the stockpile.

13. In or around March 2, 2017, FES employee Ken Peace received a letter, attached hereto as Exhibit B, from Bluestone's Vice President of Treasury, Summer Harrison (the "March Letter").

14. In the March Letter, Bluestone informed FES that Bluestone had a "significant amount of coal in inventory that it [wa]s waiting to ship." Bluestone acknowledged that it intended to deliver the remaining Purchased Tons, approximately 77,059.94 tons (the "Remaining Tons"), to its customers by April 15, 2017.

15. Accordingly, Bluestone acknowledged in the March Letter that it owed FES the payment for the Remaining Tons under the Agreement and informed FES that payment would be

[2] The Agreement states that the final payment is due no later than March 7, 2016. This appears to be a scrivener's error. The logical reading of the Agreement establishes that the parties meant that payment was due on March 7, 2017.

delayed until it was able to ship the Remaining Tons to its customers. Specifically, under the terms of the Agreement, Bluestone was to pay FES $40 per ton for the Remaining Tons by March 7, 2017, for a total of $3,082,397.60 (the "Final Payment").

16. Bluestone did not remit to FES the Final Payment on March 7, 2017, as it was required to do under the terms of the Agreement.

17. Bluestone did not remit to FES the Final Payment on or around April 15, 2017, as it said it would do in the March Letter.

18. On or around September 24, 2018, FES sent a letter, attached hereto as Exhibit C, reminding Bluestone of its contractual obligation to make the Final Payment (which Bluestone itself recognized in the March Letter) and requesting that Bluestone remit the Final Payment (the "September Letter").

19. Bluestone did not respond to the September Letter.

20. As of the date of this Complaint, Bluestone has not remitted to FES the Final Payment.

FIRST CLAIM FOR RELIEF

TURNOVER OF ESTATE PROPERTY PURSUANT TO 11 U.S.C. § 542(a)-(b)

21. Plaintiff repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 20 as if fully set forth herein.

22. Section 542(a) of the United States Bankruptcy Code provides, in pertinent part:

> [A]n entity, other than a custodian, in possession, custody, or control during the case, of property that the trustee may use, sell, or lease under section 363 of [the Bankruptcy Code], . . . shall deliver to the trustee, and account for, such property or the value of such property . . . .

11 U.S.C. § 542(a).

23. Section 542(b) of the United States Bankruptcy Code provides, in pertinent part:

> [A]n entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to . . . the trustee . . . .

11 U.S.C. § 542(b).

24. Section 541 of the Bankruptcy Code provides that a debtor's estate is comprised of, subject to certain exceptions, "all legal or equitable interests of the debtor as of the commencement of the case." 11 U.S.C. § 541(a)(1).

25. Bluestone is in possession, custody, or control of the Final Payment.

26. Bluestone has, among other things, acknowledged through the March Letter that the Final Payment is property of Debtor FES, or, in the alternative, that the Final Payment is a matured debt, payable on demand, owed to the estate. However, Bluestone has failed to deliver the Final Payment to FES.

27. Therefore, pursuant to 11 U.S.C. § 542(a)-(b), FES is entitled to the turnover of the Final Payment.

SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT

28. Plaintiff repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 20 as if fully set forth herein.

29. Even if the Court finds that the Final Payment is not property of the estate or not a debt such that FES is not entitled to turnover pursuant to 11 U.S.C. § 542(a)-(b), Bluestone breached the Agreement, and FES is entitled to damages.

30. FES contracted with Bluestone to receive $40 per ton for the Purchased Tons. In exchange, FES agreed to provide the Purchased Tons to Bluestone.

31. FES fully and properly performed all conditions, covenants, and acts required to be performed on its part in accordance with the terms and conditions of the Agreement.

32. Bluestone breached its obligations under the Agreement by failing to remit the Final Payment to FES.

33. As a direct result of Bluestone's breach, FES has sustained damages at least in the amount of $3,082,397.60, the final amount due for the sale of the remaining 77,059.94 tons of coal multiplied by the contractual price of $40 per ton.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief against Defendant as to Counts I and II of this Complaint, and that the Court enter judgment against Defendant as follows:

1. requiring Defendant to turn over, pursuant to 11 U.S.C. § 542(a)-(b), the Final Payment;
2. in the alternative, finding that Defendant breached the Agreement by failing to remit to Plaintiff the Final Payment and thus awarding appropriate damages, at least in the amount of $3,082,397.60;
3. granting Plaintiff pre- and post-judgement interest; and
4. granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: December 13, 2018

Respectfully submitted,

/s/ Kate M. Bradley

BROUSE MCDOWELL LPA
Marc B. Merklin (0018195)
Kate M. Bradley (0074206)
388 South Main Street, Suite 500
Akron, OH 44311-4407
Telephone: (330) 535-5711
Facsimile: (330) 253-8601
mmerklin@brouse.com
kbradley@brouse.com

- and -

AKIN GUMP STRAUSS HAUER & FELD LLP
Ira Dizengoff (admitted *pro hac vice*)
Lisa Beckerman (admitted *pro hac vice*)
Joseph Sorkin (admitted *pro hac vice*)
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
idizengoff@akingump.com
lbeckerman@akingump.com
jsorkin@akingump.com

Counsel for Plaintiff FES

Exhibit A

Zkey 2793733

COAL PURCHASE AGREEMENT

This Coal Purchase Agreement (the "Agreement") is made and entered into on October 10, 2016 ("Effective Date"), by and between Bluestone Energy Sales Corporation ("BESC"), 302 S. Jefferson Street, Roanoke, Virginia 24011 and FirstEnergy Solutions Corp ("FES"), an Ohio limited liability company. BESC and FES are sometimes referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, BESC and FirstEnergy Generation LLC (FEG) (as assignee of Monongahela Power Company ("Mon Power")) entered into that certain Coal Sales Agreement dated May 1st, 2016 (the "Coal Agreement") wherein BESC delivered and FEG purchased 130,771 tons of coal that was delivered into a designated stockpile (the "Stockpile") for FEG's benefit (the "Purchased Tons");

WHEREAS, the Coal Agreement was terminated by mutual agreement of the Parties on September 21, 2016 ("Termination Agreement");

WHEREAS, FEG assigned the title to the coal in the Stockpile to FES;

WHEREAS, as a result of recent discussions between the Parties' respective representatives, the Parties now agree that BESC shall purchase the Purchased Tons from FES and FES shall pay to BESC $8.00 per ton, giving recognition to the activation and start-up expenses incurred by BESC in preparation for performance under the Coal Agreement;

NOW THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties; FES and BESC, intending to be legally bound, agree as follows:

1. Purchase and Sale of Coal. Subject to the terms hereof FES shall supply to BESC, and BESC shall purchase from FES, the Purchased Tons.

2. Delivery. The quantity of Purchased Tons shall be received by BESC ratably to the extent possible and the Parties shall cooperate in good faith to establish a delivery schedule that shall reasonably accommodate the receipt of the Purchased Tons by BESC. The Parties contemplate the Purchased Tons will be received by BESC on or before January 31, 2017, but in no event later than February 28, 2017. If any Purchased Tons remain in the Stockpile as of February 28, 2017, then BESC shall pay FES for all such remaining Purchased Tons no later than March 7, 2016. FES will not be charged any additional storage fee for any Purchased Tons remaining in the stockpile after December 31, 2016. All loading and transportation costs shall be for the account of BESC.

3. Title. Title to the Purchased Tons shall at all times remain with FES until the Purchase Price is paid by BESC. Once the Purchase Price is paid, title shall transfer to BESC.

4. Purchase Price. The price for the Purchased Tons shall be $40.00 per ton F.O.B. Stockpile. The Purchased Tons are being purchased on an As-Is Where-Is basis and FES makes no representations or warranties as to the quality of the Purchased Tons.

5. Invoicing. BESC shall submit invoices to FES each Monday during the term of this Agreement based on BESC's weighted average data for all coal shipped from Monday through Sunday of the prior week. BESC will pay to FES the invoice amount on or before Friday of the week the invoice is tendered. If any Party in good faith

reasonably disputes an invoice, it shall provide a written explanation to the other Party, within ten (10) calendar days of receipt of the invoice, specifying in detail the basis for the dispute and pay any undisputed portion no later than the due date. Upon resolution of any dispute involving an invoice, any additional amount owing shall be paid with interest. If any Party fails to pay amounts under this Agreement when due, unless such amount is the subject of a dispute as provided above, or is excused by an event of force majeure, in addition to the rights and remedies provided in this Agreement, the aggrieved party shall have the right to suspend performance under this Agreement until such amounts (plus interest if applicable) have been paid, and/or exercise any remedy available at law or in equity to enforce payment of such amount due (plus interest if applicable).

6. Weighing. The weights of the Purchase Tons received hereunder shall be determined by BESC by use of a scale system located at the Stockpile site. Weights taken in accordance with this Section shall be deemed accepted as correct (absent manifest error) and shall govern all invoicing and payments hereunder. Unless otherwise specified, the costs of weighing shall be for BESC's account.

7. Activation and Start-Up Cost Mitigation. Upon execution of this Agreement, FES shall pay BESC $8.00 per ton for the Purchased Tons for a total sum of One Million Forty Six Thousand One Hundred Sixty Eight Dollars ($1,046,168).

8. Governing Law. This Agreement shall be governed by the laws of the State of West Virginia without regard to conflict-of-laws principles.

9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original; but such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties by their respective duly authorized representatives have executed this Agreement as of the Effective Date.

BLUESTONE ENERGY SALES CORPORATION

By: _____

Its: Executive Vice President

Date: 10/10/2016

FIRSTENERGY SOLUTIONS CORP

By: James D. Mellon

Its: VP Fuel & Unit Dispatch

Date: 10/10/2016

KKJ RG

Exhibit B

BLUESTONE ENERGY SALES

March 2, 2017

VIA U.S. MAIL
FirstEnergy Solutions
Ken Peace
341 White Pond Drive
Akron, OH 44320

Dear Ken,

This letter is intended as an update regarding the status of payment to First Energy. Currently, Bluestone Energy Sales Corporation has a significant amount of coal in inventory that it is waiting to ship, which total approximately 77,059.94. It is our intention to have all of this coal delivered to customers by 4-15-17. Once this coal is shipped, we will be able to send payment to First Energy.

Thank you for your patience with us while we work through this slight delay. Please don't hesitate to contact me if you have any questions or concerns regarding this matter.

Sincerely,

Summer Harrison
VP of Treasury

Exhibit C

FirstEnergy Solutions

341 White Pond Drive
Akron, Ohio 44320

September 24, 2018

Ms. Summer Harrison
VP of Treasury
Bluestone Energy Sales Corporation
302 S. Jefferson Street
Suite 600
Roanoke, VA 24011

RE: Request for Final Payment - Coal Purchase Agreement (the "Agreement") is made and entered into on October 10, 2016, by and between Bluestone Energy Sales Corporation ("BESC") and FirstEnergy Solutions Corp ("FES"), an Ohio corporation (the "Parties").

Dear Ms. Harrison,

In accordance with your status letter dated March 2, 2017 (see attached, the "Letter"), FES hereby requests payment of the final amount due for the sale of the remaining 77,059.94 tons of coal under the Agreement. As provided in Article 2 of the Agreement, "If any Purchased Tons remain in the Stockpile as of February 28, 2017, then BESC shall pay FES for all such remaining Purchased Tons no later than March 7, 2016.". As stated in the Letter, BESC had expected to deliver the remaining coal by April 15, 2017 and FES was expecting to be paid the amount due of $3,082,397.60 shortly thereafter.

Please remit the amount of $3,082,397.60 to FES per the terms of the Agreement. Should BESC fail to remit these funds to FES by October 15, 2018, FES will pursue its rights and remedies to collect such funds from BESC.

Thank you for your prompt attention to this matter.

Sincerely,

James G. Mellody
VP, Fuel and Unit Dispatch

ENTERED PURSUANT TO ADMINISTRATIVE ORDER NO. 16-04.
TERESA D. UNDERWOOD, CLERK OF BANKRUPTCY COURT

BY: /s/ Marie Randolph
Deputy Clerk

Dated: 08:41 AM December 14 2018

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE	)	CASE NO. **18-50757**
FirstEnergy Solutions Corp.	)	CHAPTER 11
DEBTOR(S).	)	ADVERSARY PROCEEDING **18-5100**
FirstEnergy Solutions Corp.	)	**HONORABLE ALAN M. KOSCHIK** **UNITED STATES BANKRUPTCY JUDGE**
PLAINTIFF(S),	)	
v.	)	
Bluestone Energy Sales Corp.	)	
DEFENDANT(S).	)	

PRETRIAL ORDER

A pretrial hearing is set for the **30th day of January, 2019 at 2:15 PM** in Room 240, U.S. Courthouse Federal Building, Two S. Main St., Akron, Ohio 44308.

Failure of counsel or any unrepresented party to appear at any scheduled pretrial hearing or otherwise to comply with the provisions of this Order, or any Pretrial Order entered by this Court, may result in dismissal or default as may be appropriate.

Prior to the initial pretrial hearing, counsel for represented parties and all unrepresented parties that have appeared in this adversary proceeding are jointly responsible for arranging a conference to

discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the adversary proceeding, and to develop a proposed discovery plan. Following the conference, Plaintiff's counsel shall complete and submit a Pretrial Worksheet that contains, at a minimum, the information requested below, to the Court at AMK-Pretrials@ohnb.uscourts.gov by no later than **12:00 p.m. noon** on the day preceding the initial pretrial hearing. Plaintiff's counsel shall ensure that all counsel of record and unrepresented parties have received a copy of the Pretrial Worksheet.

The Court urges counsel to be as efficient as possible in the administration and prosecution of this adversary proceeding. To that end, the Court permits and encourages telephonic communication between the parties. Unless otherwise ordered, the Court shall permit telephonic participation in all pretrial conferences held except for final pretrial conference, if one is scheduled. However, counsel must notify the judge's chambers **no later than noon of the business day preceding** the scheduled pretrial conference of their request to appear telephonically and to inform the Court of the telephone number at which they can be reached.

THE PRETRIAL WORKSHEET SHALL INCLUDE THE FOLLOWING INFORMATION:

Adversary Proceeding Case Number: _____
Date/Time of Initial Pretrial Hearing: _____
Parties to the Adversary Proceeding: _____

To aid in the facilitation of telephonic communication between the parties and telephonic communication with the Court during pretrial conferences the Pretrial Worksheet shall include the number at which counsel can be reached directly:

Plaintiff's counsel: _____
Defendant's counsel: _____

Discovery: Counsel should discuss the type of discovery required and the respective timeframes to complete all necessary discovery in this proceeding.

Nature of necessary discovery: _____
Suggested deadline for completion of all discovery: _____

Dispositive Motions: In order to promote the efficient development of an accurate and appropriate record, with the exception of Rule 12(b)(1) or 12(b)(6), motions that are filed in lieu of an answer, Counsel are required to obtain the Court's permission prior to filing any dispositive motions, including motions for summary judgment and/or motions for judgment on the pleadings. Such permission will be granted for good cause shown.

Future motions counsel anticipates filing: _____

***

Stipulations: At the close of discovery, the Court requires counsel to file jointly a list of all facts and legal conclusions that are not in dispute in this adversary proceeding that can be the subject of stipulations, including identifying all documents either party intends to introduce as an exhibit

and to which the parties agree are authentic. These stipulations will generally be due approximately two weeks after the close of discovery.

Alternative Dispute Resolution: The Court supports counsel's efforts to resolve matters through the use of alternative dispute resolution. If all parties to the adversary proceeding are interested in pursuing some form of alternative dispute resolution, counsel shall jointly contact Judge Koschik's chambers to assist in that process.

Miscellaneous: At the initial pretrial hearing, counsel shall be prepared discuss the following:

1. Dismissal of unnecessary parties;
2. Stipulation to facts and authenticity of documents and other exhibits not in dispute;
3. The deadline for amending pleadings or joining additional parties;
4. The scope of anticipated discovery;
5. Whether expert testimony is anticipated and, if so, deadlines concerning the identification of experts, the deadline for exchange or delivery of expert reports, and the deadline for deposing experts;
6. The likelihood that some or all of the action may be resolved by dispositive motions; and
7. Fully explore and be authorized to conclude settlement.

###

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION at AKRON

IN RE FIRSTENERGY SOLUTIONS CORP., ET AL., **Debtors**	**Case No. 18-50757-AMK** **Chapter 11** **Honorable Alan M. Koschik, United States Bankruptcy Judge**
FIRSTENERGY SOLUTIONS CORP., **Plaintiff,** **V.** **BLUESTONE ENERGY SALES CORP.,** **Defendant.**	**Adversary Proceeding 18-5100**

DEFENDANT'S ANSWER TO COMPLAINT

Defendant Bluestone Energy Sales Corp. ("Bluestone"), through counsel, for its Answer to the Complaint [D.I. 1] filed by the Plaintiff FirstEnergy Solutions Corp. ("FES" or "Plaintiff"), respectfully states as follows:

The initial unnumbered paragraph of the Complaint contains an introductory statement to which no response is required. To the extent a response is appropriate, Bluestone is without knowledge or information sufficient to form a belief as to the truth of any allegations in that paragraph and on that basis denies such allegations in full.

1. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 1 of the Complaint and on that basis denies those allegations in full.

2. Bluestone admits the allegations in numerical paragraph 2 of the Complaint.

3. Bluestone denies that this Court has jurisdiction under 28 U.S.C. §§ 157 and 1334, denies that this is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and 157(b)(2)(E), denies and does not consent that this Court may enter a final order or judgment consistent with these statutes and Article III of the United States Constitution, and denies any remaining allegations in numerical paragraph 3 of the Complaint.

4. Bluestone denies that venue is proper in the Bankruptcy Court for the Northern District of Ohio pursuant to 28 U.S.C. §§ 1408-09.

5. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 5 of the Complaint and on that basis denies those allegations in full.

6. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 6 of the Complaint and on that basis denies those allegations in full.

7. Bluestone admits that the parties entered into the Coal Purchase Agreement attached as Exhibit A to the Complaint but denies the characterization of the terms of that Agreement by the remaining allegations in numerical paragraph 7 of the complaint and therefore denies same.

8. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 8 of the Complaint regarding any relationship between FirstEnergy Generation, LLC and Monongahela Power Company and their interests in the coal at issue in this case and on that basis denies those allegations in full. Bluestone admits that the coal stockpile that was the subject of the Coal Purchase Agreement was located on

Bluestone's property at the Bent Mountain Operation near Meta, Kentucky at certain points in time, but otherwise denies the allegations in numerical paragraph 8 of the Complaint.

9. Bluestone denies the allegations in numerical paragraph 9 of the Complaint and states that the terms of the Coal Purchase Agreement speak for themselves.

10. Bluestone denies the allegations in numerical paragraph 10 of the Complaint and states that the terms of the Coal Purchase Agreement speak for themselves.

11. Bluestone denies the allegations in numerical paragraph 11 of the Complaint and states that the terms of the Coal Purchase Agreement speak for themselves.

12. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 12 of the Complaint and on that basis denies those allegations in full.

13. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 13 of the Complaint and on that basis denies those allegations in full.

14. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 14 of the Complaint and on that basis denies those allegations in full.

15. Bluestone denies the allegations in numerical paragraph 15 of the Complaint.

16. Bluestone denies the allegations in numerical paragraph 16 of the Complaint.

17. Bluestone denies the allegations in numerical paragraph 17 of the Complaint.

18. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 18 of the Complaint and on that basis denies those allegations in full.

19. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 19 of the Complaint and on that basis denies those allegations in full.

20. Bluestone denies the allegations in numerical paragraph 20 of the Complaint.

21. Numerical paragraph 21 of the Complaint is an incorporation paragraph to which no response is required, but, to the extent it is appropriate to respond, Bluestone repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 20 of this Answer as if fully set forth herein.

22. Numerical paragraph 22 of the Complaint cites a legal conclusion to which no response is necessary. Notwithstanding, Bluestone denies the characterization in numerical paragraph 22 of the Complaint that the quotes therein of portions of the United States Bankruptcy Code are "in pertinent part," but otherwise states that the United States Bankruptcy Code speaks for itself.

23. Numerical paragraph 23 of the Complaint cites a legal conclusion to which no response is necessary. Notwithstanding, Bluestone denies the characterization in numerical paragraph 23 of the Complaint that the quotes therein of portions of the United States Bankruptcy Code are "in pertinent part," but otherwise states that the United States Bankruptcy Code speaks for itself.

24. Numerical paragraph 24 of the Complaint cites a legal conclusion to which no response is necessary. Notwithstanding, Bluestone denies the characterization in numerical paragraph 24 of the Complaint of portions of the United States Bankruptcy Code, but otherwise states that the United States Bankruptcy Code speaks for itself.

25. Bluestone denies the allegations in numerical paragraph 25 of the Complaint.

26. Bluestone denies the allegations in numerical paragraph 26 of the Complaint.

27. Bluestone denies the allegations in numerical paragraph 27 of the Complaint.

28. Numerical paragraph 28 of the Complaint is an incorporation paragraph to which no response is required, but, to the extent it is appropriate to respond, Bluestone repeats, realleges, and incorporates by reference the allegations of paragraphs 1 through 27 of this Answer as if fully set forth herein.

29. Bluestone denies the allegations in numerical paragraph 29 of the Complaint.

30. Bluestone denies the allegations in numerical paragraph 30 of the Complaint.

31. Bluestone is without knowledge or information sufficient to form a belief as to the truth of the allegations in numerical paragraph 31 of the Complaint and on that basis denies those allegations in full.

32. Bluestone denies the allegations in numerical paragraph 32 of the Complaint.

33. Bluestone denies the allegations in numerical paragraph 33 of the Complaint.

34. All allegations of the Complaint not expressly admitted above are hereby denied.

AFFIRMATIVE DEFENSES

35. The Complaint fails to state a claim upon which relief may be granted.

36. The Bankruptcy Court lacks subject matter jurisdiction.

37. The Courts in the Northern District of Ohio lack appropriate venue.

38. The Courts in the Northern District of Ohio lack personal jurisdiction over the Defendant.

39. The claims in the Complaint are barred by the doctrines of accord and satisfaction, estoppel, laches, payment, and waiver, in that the Plaintiff, among other things,

agreed to and/or acquiesced in the Defendant paying for the coal at issue only after the coal was resold and paid for by other customers of the Defendant.

40. The claims in the Complaint are barred by any other affirmative defenses the applicability of which to this case may be adduced during this matter.

WHEREFORE, Bluestone respectfully requests the following relief against the Plaintiff, and entry of judgment against the Plaintiff as follows:

A. Withdrawal of the reference from this Bankruptcy Court to the United States District Court for Northern District of Ohio;

B. Dismissal with prejudice of Count I of the Complaint;

C. Dismissal with prejudice of Count II of the Complaint;

D. Trial by jury on all issues in this case so triable;

E. Any and all other appropriate relief to which the Defendant may be entitled as may be deemed just and proper, including but not limited to costs and fees.

Respectfully submitted

/s/ Richard A. Getty
RICHARD A. GETTY
(Ohio Bar #23245)
and
C. THOMAS EZZELL (admitted *pro hac vice*)

THE GETTY LAW GROUP, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909
rgetty@gettylawgroup.com
tezzell@gettylawgroup.com

COUNSEL FOR DEFENDANT
BLUESTONE ENERGY SALES CORP.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Answer was served on this the 28th day of May, 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and applicable Standing Order(s), if any, upon the following:

Marc B. Merklin (0018195)
and
Kate M. Bradley (0074206)
BROUSE MCDOWELL LPA
338 South Main Street, Suite 500
Akron, Ohio 44311-4407
Telephone: (330) 535-5711
Facsimile: (330) 253-8601
mmerklin@brouse.com
kbradley@brouse.com

Ira Dizengoff (admitted *pro hac vice*)
Abid Qureshi (admitted *pro hac vice*)
Joseph Sorkin (admitted *pro hac vice*)
and
Christopher J. Gessner (admitted *pro hac vice*)
AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
idizengoff@akingump.com
aqureshi@akingump.com
jsorkin@akingump.com
cgessner@akingump.com

COUNSEL FOR PLAINTIFF
FIRSTENERGY SOLUTIONS CORP.

ctepld0573